

7 FAM 1200 APPENDIX E

LOSS OF NATIONALITY OF MARRIED WOMEN UNDER THE ACT OF 1907 AND SUCCESSOR STATUTES

(CT:CON-454; 04-15-2013)
(Office of Origin: CA/OCS/L)

7 FAM 1210 APPENDIX E INTRODUCTION

(CT:CON-253; 04-22-2008)

- a. This Appendix describes the evolution of the adjudication by the Bureau of Consular Affairs (CA) and posts abroad of possible loss of nationality cases involving U.S. citizen women who married aliens in the early part of the 20th century. This guidance is provided because it is pertinent to the adjudication of citizenship claims of the children born abroad to such women.
- b. Frederick Van Dyne, Assistant Solicitor to the Department of State's Treatise on the Law of Naturalization (1907) and Van Dyne's Citizenship of the United States of America (1904) clarify the evolution of U.S. law on this subject.
 - (1) In an instruction to American Consul Sagua la Grade, June 7, 1894, Acting Secretary Uhl said "The view has been taken by this Department in several cases that the marriage of an American woman to a foreigner does not completely divest [sic.] her of her American citizenship, but that the same is only suspended during coverture, and reverts upon the death of her husband, if she is residing in the United States, or upon her returning to this country if residing abroad." (Van Dyne on Citizenship, 137).
 - (2) Secretary Sherman, in an instruction to the United States Minister at St. Petersburg, March 15, 1897, said "By our statute an alien wife of an American citizen shares his citizenship. By the usual rules of Continental private international law, a woman marrying an alien shares his status, certainly during his life; but thereafter, on widowhood, reverts to her original status unless she abandons the country of her origin and returns to that of her husband." (Foreign Relations, 1901, 443).
 - (3) Cockburn, in his work on Nationality (published in 1869, page 24) said: "in every country, except where the English law prevails, the nationality of a woman on marriage merges in that of her husband, she loses her own nationality and acquires his."
- c. Van Dyne also points out that between 1862 – 1877, the Attorney General of the United States issued four different, and sometimes conflicting opinions

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regarding this issue. During the same period, various U.S. courts and international claims commissions to which the United States was a party issued varying opinions on the subject.

- d. To resolve any doubt that might exist because of the variant decisions of the courts, and opinions of the Secretaries of State and Attorneys General as to the effect of the marriage of an American woman to an alien, on April 13, 1906, the Senate passed a joint resolution providing for a commission to examine the subjects of citizenship of the United States, expatriation, and protection abroad and to make a report and recommendations to the Congress for its consideration. The Citizenship Commission of 1906 recommended and Congress enacted the Expatriation Act of March 2, 1907 (34 Statutes at Large 1228), Section 3, which provided by statute that a female U.S. citizen automatically lost her citizenship upon marriage to an alien.
- e. Section 2, Act of February 10, 1855 (10 Statutes at Large 604) provided "Any women who is now or may hereafter be married to a citizen of the United States, and who might herself be lawfully naturalized shall be deemed a citizen." The Naturalization Act of June 29, 1906 (34 Statutes at Large 596) provided a uniform rule for naturalization.

NOTE: "After 1907, the vast majority of married women in the United States no longer held the status of citizen or non citizen as a consequence of birthplace, parentage, or independent naturalization. The citizenship of their spouse was the single factor ruling their nationalities."

(Bredbenner, A Nationality of Her Own: Women, Marriage and the Law of Citizenship (1998), page 16).

- f. The U.S. Supreme Court upheld the Expatriation Act of March 2, 1907, noting that "the identity of husband and wife is an ancient principle of our jurisprudence." (Mackenzie v. Hare, 239 U.S. 299, 311, 60 L. Ed. 297, 36 S. Ct. 106 (1915)). In the matter of Miller v. Albright, 523 U.S. 420 (1998), the U.S. Supreme Court noted:

"The statutory rule that women relinquished their United States citizenship upon marriage to an alien encountered increasing opposition, fueled in large part by the women's suffrage movement and the enhanced importance of citizenship to women as they obtained the right to vote. In response, Congress provided a measure of relief. Under the 1922 Cable Act, marriage to an alien no longer stripped a woman of her citizenship automatically. But equal respect for a woman's nationality remained only partially realized. A woman still lost her United States citizenship if she married an alien ineligible for citizenship; she could not become a citizen by naturalization if her husband did not qualify for citizenship; she was presumed to have renounced her citizenship if she lived abroad in her husband's country for two years, or if she lived abroad elsewhere for five years. A woman who became a naturalized citizen was unable to transmit her citizenship to her

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children if her non-citizen husband remained alive and they were not separated. See *In re Citizenship Status of Minor Children Where Mother Alone Becomes Citizen Through Naturalization*, 25 F.2d 210, 210 (NJ 1928) ("the status of the wife was dependent upon that of her husband, and therefore the children acquired their citizenship from the same source as had been theretofore existent under the common law"); see Gettys, *The Law of Citizenship in the United States* 118 (1934), at 56-57. No restrictions of like kind applied to male United States citizens."

NOTE: The Court referenced: Bredbenner, *Toward Independent Citizenship: Married Women's Nationality Rights in the United States: 1855-1937*, 54-59 (Ph. D. dissertation, University of Virginia, 1990) and

Sapiro, *Women, Citizenship, and Nationality: Immigration and Naturalization Policies in the United States*, 13 *Politics & Soc.* 1, 4-10 (1984).

See...

Bredbenner, *A Nationality of Her Own: Women, Marriage and the Law of Citizenship* (1998))

National Archives: *Women and Naturalization*

- g. The Act of March 3, 1931 (46 Statutes at Large 1511), eliminated prospectively loss of nationality by a U.S. citizen woman solely due to marriage to an alien husband.
- h. Legislation in 1936 and 1940 further eroded the Act of 1907, and made provision for resumption of U.S. citizenship, but did not restore U.S. citizenship to all such women. A 1994 amendment to the Immigration and Nationality Act (INA), the Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416 (108 Statutes at Large 4305), finally provided a remedy, restoring citizenship retroactively and simplifying claims to U.S. citizenship by children of the U.S. citizen women who lost U.S. citizenship under these laws. (See 7 FAM 1270 Appendix E.)
- i. The Department continues to see these cases, which necessitates publication of this Appendix, to explain how these cases were adjudicated, and how they may be remedied today.

7 FAM 1220 APPENDIX E AUTHORITIES

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- a. The Act of March 2, 1907 (34 Statutes at Large 1228), Section 3, Expatriation Act;
- b. The Act of September 22, 1922 (42 Statutes at Large 1021), Section 3, Married Women's Citizenship Act, also known as the Cable Act;
- c. The Act of July 3, 1930 (46 Statutes at Large 854) Naturalization of Married

Women;

- d. The Act of March 3, 1931 (46 Statutes at Large 1511), Section 4, Naturalization Act, Amendments;
- e. The Act of June 25, 1936 (49 Statutes at Large 1917), An Act to Repatriate Native-Born Women Who Have Heretofore Lost Their Citizenship By Marriage to An Alien;
- f. The Act of July 2, 1940 (54 Statutes at Large 715), Repatriation of Certain Native-Born Women; and
- g. The Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416 (108 Statutes at Large 4305).

7 FAM 1230 APPENDIX E EXPATRIATION OF MARRIED WOMEN PRIOR TO 1907

(CT:CON-253; 04-22-2008)

- a. In the absence of a statute governing the nationality status of a woman national of the United States who married an alien prior to the enactment of the Act of March 2, 1907 (34 Statutes at Large 1228), the Department held that such a woman retained her nationality unless:
 - (1) She took up a permanent residence abroad with her husband at some time prior to the passage of the Cable Act on September 22, 1922, and
 - (2) She acquired, as a result of marriage, the nationality of the country of which her husband was a citizen or subject.

Such a woman was held to have lost her United States citizenship only if the provisions of both paragraphs (1) and (2) were applicable to her case.

- b. The Executive Order of President Roosevelt of April 8, 1907, amending the diplomatic and consular regulations to reflect the Act of March 2, 1907 on the Expatriation of Citizens and Their Protection (34 Statutes at Large 1228), provided:

"Registration to Resume or Retain Citizenship: When an American woman has married a foreigner and he dies or they are absolutely divorced, in order to resume her rights as an American citizen, she must register with the American consulate within one year after the termination of the marital relation."

- c. Effect of Alien Husband's Naturalization in a Foreign State: An American woman who married a citizen of a foreign state prior to March 2, 1907, and retained her citizenship, but whose alien husband was naturalized in another foreign state before March 2, 1907, was held to have lost her U.S. citizenship if she took up a permanent residence with him abroad prior to September 22,

1922, and acquired the citizenship of the country in which he was naturalized.

7 FAM 1240 APPENDIX E AMERICAN WOMEN MARRIED TO ALIENS BETWEEN MARCH 2, 1907 AND SEPTEMBER 22, 1922

(CT:CON-253; 04-22-2008)

- a. A U.S. citizen woman who married an alien between March 2, 1907 and September 22, 1922, was held to have lost her U.S. citizenship under Section 3 of the Act of March 2, 1907 (34 Statutes at Large 1228).
- b. When she married, on or after September 22, 1922, and prior to March 3, 1931, an alien ineligible to be naturalized as a U.S. citizen, she was held to have lost her U.S. citizenship under Section 3 of the Act of September 22, 1922. It was held that if such a marriage took place between April 6, 1917 and July 2, 1921, during which period the United States was a war, she lost her citizenship as of the termination of World War I if the marital relationship continued after such date and if her husband was still an alien. If, however, the marriage terminated by death or divorce prior to July 2, 1921, or if, in the meantime her husband had become a U.S. citizen, such woman was held never to have lost her status as a U.S. citizen through such marriage.
- c. The Act of March 3, 1931 (46 Statutes at Large 1511), amended Section 3 of the Act of September 22, 1922, so that, thereafter, the provision under which a U.S. citizen woman lost her citizenship solely by marriage to an alien ineligible for U.S. citizenship was eliminated from the Act of September 22, 1922. Thus, a U.S. citizen woman who married any alien on or after March 3, 1931, consequently did not thereby lose her U.S. citizenship solely by reason of Section 3 of the Act of March 2, 1907, (34 Statutes at Large 1228) which provided that U.S. citizen women who married aliens lost their U.S. citizenship.
- d. A U.S. citizen woman who married in the United States lost U.S. citizenship if she later established residence abroad with her husband before September 22, 1922, or March 2, 1931, depending on the eligibility for naturalization of the alien.

7 FAM 1250 APPENDIX E ATTORNEY GENERAL INTERPRETATION OF THE ACTS OF 1907 AND 1922

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- a. On January 25, 1940, Robert H. Jackson, Attorney General of the United States rendered an opinion regarding expatriation of married women (39 Opinion of

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the Attorney General 411) upholding a finding of loss of nationality of Mrs. A. whose U.S. citizenship was acquired by naturalization by virtue of her marriage to a U.S. citizen in 1894. Mrs. A. was later included in her husband's naturalization as a German citizen with her knowledge in 1924.

- b. On August 22, 1940, Attorney General Robert H. Jackson rendered an opinion regarding loss of citizenship through marriage to an alien (39 Opinion of the Attorney General 474) who acquired naturalization in a foreign state while the United States was at war, that is, between April 6, 1917 and July 2, 1921. The Attorney General's opinion reflected that as these provisions have been construed by the Department of State, the Immigration and Naturalization Service, and by the courts, it has been generally understood that the proviso in section 2 prevented loss of citizenship while the United States was at war. The Solicitor of the Department of Labor (at one time the parent agency of the former INS) concluded in 1938 that the acts of these citizens amounted to attempted expatriation which never became effective. The Legal Adviser of the U.S. Department of State expressed the view in a letter to the Attorney General of July 10, 1940, that expatriation became effective upon termination of the war. The Attorney General concluded that "the preponderance of the judicial determinations in several courts which have dealt with the question impel me to the conclusion that American citizens who were naturalized abroad after entry into the war by this country on April 6, 1917, and prior to the congressional resolution of July 2, 1921, declaring the war at an end, lost their citizenship as of the latter date, and that this is also true of American women who married aliens or who were naturalized abroad through the naturalization of their husbands during the same period, provided the marital status had not previously been terminated."

7 FAM 1260 APPENDIX E RESUMPTION OF NATIONALITY

(CT:CON-253; 04-22-2008)

- a. Pursuant to INA 324(c) (8 U.S.C. 1435(c)) a woman formerly a citizen of the United States at birth who wished to regain her citizenship under INA 324(c) can apply abroad to a diplomatic or consular officer on the form prescribed by the Department to take the oath of allegiance prescribed by section 337 of that Act. The applicant was required to submit documentary evidence to establish her eligibility to take the oath of allegiance. If the diplomatic or consular officer or the Department determined, when the application was submitted to the Department for decision, that the applicant is ineligible for resumption of citizenship because of INA 313 (8 U.S.C. 1424), the oath was not to be administered.
- b. A woman who has been restored to citizenship by the Act of June 25, 1936 (49 Statutes at Large 1917), as amended by the Act of July 2, 1940 (54 Statutes at

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Large 715), but who failed to take the oath of allegiance prior to December 24, 1952, as prescribed by the nationality laws, can apply abroad to any diplomatic or consular officer to take the oath of allegiance as prescribed by INA 337 (8 U.S.C. 1448).

- c. Upon request and payment of the prescribed fee, a diplomatic or consular officer or the Department issued a certified copy of the application and oath administered to a woman repatriated under this section.
- d. This resumption of citizenship was also called "repatriation", a term which in current consular parlance has a different meaning (see 7 FAM 370).

7 FAM 1270 APPENDIX E EFFECT OF AFROYIM AND TERRAZAS ON SECTION 3 OF THE ACT OF 1907

(CT:CON-407; 06-29-2012)

- a. Marriage of a U.S. citizen woman to an alien is expatriating under Section 3 of the Act of March 2, 1907 (34 Statutes at Large 1228) only if there is a statement by the U.S. citizen woman that she intended to relinquish U.S. citizenship.
- b. If an "L" Consular Lookout and Support System (CLASS) hold exists for loss of nationality in a case involving loss by marriage, the cases should be referred to CA/OCS/L (Ask-OCS-L-Dom-Post@state.gov) for administrative review.
- c. If a "Q" lookout exists in CLASS under this section of law, absent a statement by the U.S. citizen woman that she intended to relinquish U.S. citizenship, the "Q" lookout should be removed by CA/OCS/ACS or passport agency or center.

7 FAM 1280 APPENDIX E THE 1994 AMENDMENT TO THE IMMIGRATION AND NATIONALITY ACT

(CT:CON-454; 04-15-2013)

- a. The Immigration and Nationality Technical Corrections Act of 1994, Public Law 103-416 (108 Statutes at Large 4305), October 25, 1994 (see 7 FAM 1133.2-1) retroactively benefited the children born abroad to U.S. women and alien fathers, prior to May 24, 1934, including those for whom findings of loss of nationality were made under the Acts of 1907 and 1922.
- b. If a post abroad or a passport agency or center receives a passport application for a person born abroad prior to May 24, 1934 to a U.S. citizen mother married to an alien who lost U.S. citizenship under the Act of 1907 and its successor statutes, or for whom a "Q" lookout exists for possible loss of citizenship, follow the guidance in **7 FAM** 1270 Appendix E and 7 FAM 1230

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general guidance regarding administrative review and appeal of previous findings of loss of nationality.

- c. The CLASS hold against the mother should be removed prior to issuance of a passport to the child.

7 FAM 1290 APPENDIX E HISTORICAL INSTRUCTIONS REGARDING SECTION 3 OF THE ACT OF 1907

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Historical instructions to consuls regarding loss of nationality and married women under the Act of March 2, 1907 and its successor statutes are available on the CAWeb Intranet by searching under Citizens Services, Service Area: Loss of Nationality, Reference Materials and Reports.